



## OFFICE OF THE SECRETARY OF STATE

### NEWS RELEASE

**BILL BRADBURY**

**For Immediate Release:**

April 11, 2006

**Contact:** Carla Corbin  
Elections Division  
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on April 10, 2006, for initiative petition #2, proposing a statutory amendment, for the General Election of November 4, 2008.

In addition, Secretary of State Bill Bradbury determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

**PROHIBITS APPOINTED JUDGE FROM BEING CONSIDERED AN INCUMBENT  
IN THE ELECTION FIRST FOLLOWING JUDGE'S APPOINTMENT**

**RESULT OF "YES" VOTE:** "Yes" vote prohibits appointed judge from being considered incumbent in the election first following judge's appointment; ballot shall not include "incumbent" designation for appointed judge.

**RESULT OF "NO" VOTE:** "No" vote retains current law allowing appointed judge to be considered incumbent, requiring ballot to include "incumbent" following names of specified candidates for judicial offices.

**SUMMARY:** Under current law, an appointed judge may be considered an incumbent in the election first following the judge's appointment; ballot must include the word "incumbent" following the name of each candidate for Supreme Court, Court of Appeals, Oregon Tax Court, and circuit court who was a regularly elected or appointed judge of the court to which the candidate seeks election. Measure prohibits an appointed judge from being considered an incumbent in the election first following his or her appointment; a judge who holds an office by reason of appointment shall not have printed on the ballot near his or her name the designation "incumbent," or any other designation implying that the candidate already holds the office for which he or she is running. Other provisions.

Chief Petitioner(s): Bill Sizemore, PO Box 343, Beavercreek, OR 97004.

Copies of the text of this initiative are available at Room 141 State Capitol, for \$.25. Written requests for copies with your remittance of \$1.00 prepaid, should be addressed to: Elections Division, Room 141 State Capitol, Salem, OR 97310-0722.

There now follows an appeal period of 10 business days. Any elector dissatisfied with the ballot title certified by the Attorney General, who also submitted in a timely manner written comments which addressed the specific legal standards a ballot title must meet, may petition the Supreme Court for a different title. The appeal period ends at 5:00 p.m. on April 24, 2006. The appeal procedures are outlined in ORS 250.085.

The required number of signatures for placement on the 2008 general election ballot is determined by the total votes cast for all candidates for governor at the 2006 general election. These signatures shall be filed in this office not later than July 3, 2008.

# # #



DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

April 10, 2006

John Lindback  
Director, Elections Division  
Office of the Secretary of State  
141 State Capitol  
Salem, OR 97310

Re: Proposed Initiative Petition — Prohibits Appointed Judge From Being Considered An Incumbent In The Election First Following Judge's Appointment  
DOJ File #BT-02-06; Elections Division #2

Dear Mr. Lindback:

We have reviewed the comment letters from Gerry Gaydos and Bill Sizemore about the draft ballot title for the above-referenced proposed measure. This letter summarizes those comments, our responses to the comments, and the reasons why we altered the ballot title, or declined to alter it, in response to the comments and upon our further review of the proposed measure. This letter should be included in the record if the Oregon Supreme Court is asked to review the ballot title

**Gaydos's Comments**

Commenter Gaydos first addresses the draft "No" statement, stating that he believes it to be "adequate, but confusing." Specifically, he contends that the word "specified" should appear before the word "judicial" rather than before "candidates." We reject that comment. We placed the word "specified" before "candidates" to make it clear that an election ballot contains the word "incumbent" following the names of *only* particular candidates – viz., those who were regularly elected or appointed to the court to which the candidate seeks election.

Gaydos also challenges the summary statement. First, he contends that the first sentence is inaccurate because it suggests that "under current law an appointed judge 'may' be considered the incumbent" when, in his view, current law requires an appointed judge to be considered the incumbent. We reject Gaydos's comment because the word "may" more accurately describes current law. Under current law, the only judges who are referred to as "incumbents" on the ballot are those who seek election to the same court of appointment. That is, an appointed judge is not labeled an "incumbent" on the ballot if he or she is seeking election to a different court. In addition, we note that the first sentence of section 1 in the measure, by its terms, may have implications beyond whether the term "incumbent" appears on a ballot.

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Finally, Gaydos contends that the summary is insufficient because it fails to explain that the measure "will limit the information about candidates that may be of great importance to electors." We reject that comment, and Gaydos's proposed wording, because it is not "impartial" and it is not necessary to convey the "major effect" of the measure. ORS 250.035(2)(d).

#### **Sizemore's Comments**

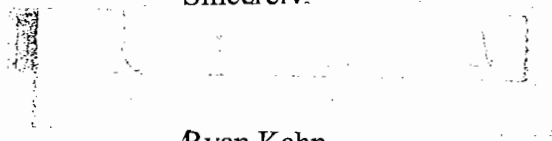
Commenter Sizemore states that he believes that the draft ballot title complies with the statutory requirements, but he offers one suggestion. Specifically, he asks that the caption and result statements refer to the plural form of "judge" rather than singular. We reject that comment because the singular form is readily understandable.

#### **Constitutional Comments**

In a separate letter, Gaydos contends that the proposed measure violates Article IV, Section 1, of the Oregon Constitution. That issue is beyond the scope of the ballot-title drafting process. *See* OAR 165-14-0028 (providing for separate review process by Secretary of State to determine whether measure complies with constitutional procedural requirements for proposed initiative measures).

For the reasons stated above, we certify the attached ballot title pursuant to ORS 250.067(2).

Sincerely,



Ryan Kahn  
Assistant Attorney General

RPK:mlk/APP91946

#### **Enclosure**

c: Peter Shepherd, Deputy Attorney General  
Don Arnold, General Counsel Division  
Steve Wolf, General Counsel Division

Bill Sizemore  
P.O. Box 343  
Beavercreek, Oregon 97004

Gerry Gaydos  
Gaydos Churnside & Balthrop PC  
440 E Broadway Ste 300  
Eugene, Oregon 974014

**BALLOT TITLE**

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INCUMBENT IN THE ELECTION FIRST FOLLOWING JUDGE'S  
APPOINTMENT**

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